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Of Counsel

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

----- X Case No. 13-35854 (RG)

In re:

Chapter 7

THEODORE R. BOHN,

Debtor.

----- X

STEINHARDT MANAGEMENT, INC.,

Plaintiff,

-against-

**COMPLAINT TO DENY
DISCHARGEABILITY OF
DEBT PURSUANT TO
11 U.S.C. § 523**

Adv. Pro. No.:

THEODORE R. BOHN,

Defendant.

----- X

Plaintiff STEINHARDT MANAGEMENT, INC., by its attorneys
JAROSLAWICZ & JAROS LLC, alleges for its complaint against the Defendant-Debtor
as follows:

JURISDICTION

1. This action is being commenced against Defendant-Debtor
THEODORE R. BOHN pursuant to: (i) FRBP 7001(1) to recover money or property; and

(ii) FRBP 7001(6) to determine the dischargeability of a debt of the Debtor under 11 U.S.C. § 523(a)(2)(A) and § 523(a)(6), and to declare the debt liquidated to the extent necessary. This action is a core proceeding and jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1334 and § 157(b).

PARTIES

2. Plaintiff STEINHARDT MANAGEMENT, INC. (hereinafter “STEINHARDT” or “plaintiff”) is a corporation created and existing pursuant to the laws of the State of New York.

3. Defendant THEODORE R. BOHN is an individual, is an attorney, and is the Debtor herein (hereinafter “Debtor” or “Defendant-Debtor”)

THE BANKRUPTCY FILING

4. On November 26, 2013, at or about 11:48 a.m., Debtor filed a voluntary Chapter 7 bankruptcy petition.

COMMON ALLEGATIONS

5. On July 21, 2011, Debtor commenced an action *pro se* in New York State Supreme Court, New York County, under Index No. 102357/11, naming STEINHARDT as a defendant therein, among other defendants.

6. The complaint as against STEINHARDT was frivolous and intended solely to harass STEINHARDT.

7. STEINHARDT moved before the trial court (Hon. Milton Tingling, J.S.C.) to dismiss the complaint and for sanctions to be imposed against Debtor for his

wrongful conduct in prosecuting a frivolous lawsuit whose purpose was to harass STEINHARDT.

8. The trial court denied the motion and STEINHARDT appealed to the immediate court of appeal, the Appellate Division, First Department (“the Appellate Division”).

9. The Appellate Division reversed the trial court and remanded the matter for a hearing on amount of monetary sanctions to be imposed against Debtor for his frivolous conduct. (See Exhibit 1; reported at *Bohn v. 176 W. 87th St. Owners Corp.*, 106 A.D.3d 598 (1st Dep’t 2013).

10. In pertinent part, the Appellate Division held as follows:

Order[], Supreme Court, New York County (Milton A. Tingling, J.), entered . . . April 18, 2012, which denied defendant[]-appellant[’s] motion[] pursuant to CPLR 3211 and 3212 and defendant Steinhardt Management’s motion for sanctions against plaintiff, unanimously reversed, on the law, without costs, the motion[] granted, and the matter remanded for a determination of the appropriate attorneys’ fees.

* * *

We find that the complaint is without merit and apparently was undertaken to harass defendants (*see Great Am. Ins. Cos. v. Bearcat Fin. Servs., Inc.*, 90 A.D.3d 533 [1st Dep’t 2011], *lv dismissed* 18 N.Y.3d 951 [2012]). Accordingly, an award of attorneys’ fees to Steinhardt is appropriate, and we remand the matter for a determination of the amount of fees incurred. (EXHIBIT 2)

11. New York’s Rules of Court, codified at title 22 N.Y.C.R.R. Part 1200 (Rules of Professional Conduct) provides in pertinent part as follows:

§ 3.1 (a): “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous.”; and

§ 3.3 (b) (2) “A lawyer’s conduct is ‘frivolous’ for purposes of this Rule if . . . the conduct . . . serves merely to harass or maliciously injure another”. (EXHIBIT 3)

12. On remand, the trial court appointed a referee (Hon. Ira Gammerman, *J.H.O.*) to hear and recommend the dollar amount of monetary sanctions to be entered against Debtor for his frivolous conduct. (EXHIBIT 4).

13. Debtor sat through, participated in, and questioned witnesses throughout the sanctions hearing conducted the morning of November 26, 2013. (Exhibit 5)

14. At the end of the hearing, even as the referee was about to announce the sanctions amount, the Debtor stated that his Chapter 7 petition had just been filed, and claimed that the proceeding was stayed.

15. If the Debtor was correct, his brinksmanship conduct wasted the time of everyone involved in the proceeding, including the attorneys and the court.

16. Upon information and belief, however, 11 U.S.C. § 362(b)(4) exempts actions brought pursuant to governmental police or regulatory powers, and therefore sanctions hearings are exempt from the Automatic Stay. *See Alpern v. Lieb*, 11 F.3d 689 (7th Cir. 1993).

17. The referee proceeded to render his recommendation that Debtor owes STEINHARDT \$34,400 in the nature of attorneys’ fees for frivolous conduct, and “so-ordered” it on December 10, 2013 (EXHIBIT 5).

18. Two days later, on December 12, 2013, the trial court ordered the action stayed by reason of the bankruptcy (**EXHIBIT 6**).

19. Because of the Automatic Stay, the Debt amount has not been reduced to a judgment in the New York State Supreme Court.

20. The sanctions recommendation of \$34,400 was based upon the factual finding by the Appellate Division that the Debtor's conduct against STEINHARDT constituted harassment.

21. The sanctions recommendation of \$34,400 was based upon the factual finding by the Appellate Division that the Debtor's conduct against STEINHARDT was frivolous.

22. The Debtor owes STEINHARDT a debt of \$34,000 (the "Debt").

AS AND FOR A FIRST CAUSE OF ACTION

23. Plaintiff repeats and restates each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth herein.

24. The Debt owed by Debtor to STEINHARDT is for money, property, or services obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the Debtor's or an insider's financial condition.

25. Accordingly, and pursuant to 11 U.S.C. § 523 (a) (2) (A), the aforesaid amount is an obligation owed by Debtor that is not dischargeable.

AS AND FOR A SECOND CAUSE OF ACTION

26. Plaintiff repeats and restates each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

27. The Debt owed by Debtor to STEINHARDT is for a willful and malicious injury by the Debtor to STEINHARDT or to STEINHARDT'S property.

28. Accordingly, and pursuant to 11 U.S.C. § 523 (a) (6), the aforesaid amount is an obligation owed by Debtor that is not dischargeable.

AS AND FOR A THIRD CAUSE OF ACTION

29. Plaintiff repeats and restates each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

30. To the extent the Debt has not been deemed to have been liquidated, the amount of the Debt owed to STEINHARDT should be liquidated and determined to be \$34,400 either by this Court or relief granted by this Court to allow the amount to be liquidated in the New York State Court.

AS AND FOR A FIFTH CAUSE OF ACTION

31. Plaintiff repeats and restates each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth here.

32. As a result of the foregoing, Debtor is liable to STEINHARDT for the sum of \$34,400, together with statutory interest thereon, and attorneys' fees.

WHEREFORE, it is respectfully requested that the Court enter a judgment in favor of plaintiff STEINHARDT MANAGEMENT, INC.:

a) to the extent the debt has not been liquidated, DECLARING the debt owed to plaintiff by Debtor-Defendant THEODORE R. BOHN to be \$34,400;

b) DECLARING the Debt owed by Debtor-Defendant THEODORE R. BOHN to plaintiff to be non-dischargeable pursuant to 11 U.S.C. § 523;

c) ADJUDGING Debtor-Defendant THEODORE R. BOHN liable to plaintiff for the sum of \$34,400, together with statutory interest, and attorneys' fees; and

d) AWARDING plaintiff such other or further relief that the Court deems is just and proper.

Dated: February 17, 2014

JAROSLAWICZ & JAROS LLC

*Counsel to STEINHARDT
MANAGEMENT, INC.*

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New York, NY 10007

Telephone: (212) 227-2780

Facsimile: (212) 227-5090

by: s/Harris Marks, Esq.

and

s/Robert J. Tolchin, Esq.,

of counsel

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING
J.S.C.
Justice

PART 44

INDEX NO. 142357/11
MOTION DATE 4/30/12
MOTION SEQ. NO. 1

Boh

176 w. 87 Ys

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s) _____

Answering Affidavits — Exhibits _____ No(s) _____

Replying Affidavits _____ No(s) _____

Upon the foregoing papers, it is ordered that this motion is

The defendant Steinhardt Management, Inc. moves to dismiss the complaint and an award against the plaintiff for commencing a frivolous lawsuit. The plaintiff opposes and cross-moves to disqualify the movant's counsel. The defendant Steinhardt opposes the cross-motion.

A court considering a motion [to dismiss] pursuant to CPLR 3211 is required to accept the allegations as true and determine whether those facts are sufficient to plead any cause of action. *Leon v. Washington*, 84 N.Y.2d 83, 88, 638 N.Y.S.2d 972 (1994). Whether a plaintiff can ultimately establish its allegations is not taken into consideration in determining a motion to dismiss. *Phillips South Beach, LLC v. ZC Specialty Insurance Company*, 55 A.D.3d 493, 867 N.Y.S.2d 386 (1st Dept. 2008).

In the case at bar, the motion is denied as the allegations plead are sufficient to defeat the motion.

The cross-motion is denied as baseless.

FILED

APR 18 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 4/6/12

Mat, J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

EXHIBIT 1

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Bohn v 176 W. 87th St. Owners Corp.
2013 NY Slip Op 03755 [106 AD3d 598]
May 23, 2013
Appellate Division, First Department
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
As corrected through Wednesday, June 26, 2013

Theodore Bohn, Respondent,
v
176 W. 87th St. Owners Corp. et al., Defendants, and Steinhardt Management, Inc., Appellant. Theodore Bohn, Respondent, v 176 W. 87th St. Owners Corp. et al., Defendants, and Seth Friedland et al., Appellants. Theodore Bohn, Appellant, v 176 W. 87th St. Owners Corp. et al., Respondents, et al., Defendants. Robert Cantor, Esq., et al., Nonparty Respondents.

—[*1] Cantor, Epstein & Mazzola LLP, New York (Robert I. Cantor of counsel), for 176 W. 87th Street Owners Corp., Richard Feldman and Sonnenschein, Sherman & Deutsch, LLP, appellants.

Jaroslawicz & Jaros LLC, New York (Michelle Holman of counsel), for Steinhardt Management, Inc., appellant.

Friedland Laifer & Robbins, LLP, New York (Eugene P. Hanson of counsel), for Seth Friedland and Friedland Laifer & Robbins, appellants.

Theodore Bohn, New York, appellant pro se/respondent pro se.

Cantor, Epstein & Mazzola LLP, New York (Robert I. Cantor of counsel), for 176 W. 87th Street Owners Corp., Paul Gottsegen, Insignia Management, Halstead Management, Richard Feldman, Sonnenschein, Sherman & Deutsch, LLP, Robert Cantor and Cantor, Epstein & Mazzola LLP, respondents.

Orders, Supreme Court, New York County (Milton A. Tingling, J.), entered April 17,

EXHIBIT 2

2012 and April 18, 2012, which denied defendants-appellants' motions pursuant to CPLR 3211 and 3212 and defendant Steinhardt Management's motion for sanctions against plaintiff, unanimously reversed, on the law, without costs, the motions granted, and the matter remanded for a determination of the appropriate attorneys' fees. The Clerk is directed to enter judgment in favor of defendants-appellants dismissing the complaint as against them. Order, same court and Justice, entered May 16, 2012, which, to the extent appealed from as limited by the briefs, denied plaintiff's motion for sanctions against nonparty Robert Cantor Esq., and to disqualify Cantor and Cantor, Epstein, & Mazzola LLP from representing Feldman and Sonnenschein, Sherman & Deutsch, LLP, unanimously affirmed, without costs. Order, same court and Justice, entered April 17, 2012, which granted Cantor's motion to quash a subpoena, unanimously affirmed, without costs.

In 2003, plaintiff, a shareholder-tenant in the cooperative located at 176 West 87th Street in Manhattan, commenced an action (the 2003 action) against defendant 176 W. 87th Street Owners Corp., among others, alleging that in late 1999 he began complaining to defendant Paul Gottsegen, the managing agent, that his apartment was being made uninhabitable by odors entering it from a restaurant on the ground floor of the building. He alleged that his complaints were ignored and that although the Department of Environmental Protection issued several [*2] violations based on the odors, defendants failed to ameliorate the problem, which forced him to sell his apartment.

The complaint in this action, commenced in July 2011, centers on the allegations that defendants provided false letters to the Environmental Control Board about who was authorized to represent the cooperative in defending against the violations, that the letters later disappeared, and that defendants acted to conceal the existence of the letters.

The prima facie tort cause of action fails to allege that defendants, or any of them, acted solely to injure plaintiff (*see WFB Telecom. v NYNEX Corp.*, 188 AD2d 257, 258 [1st Dept 1992], *lv denied* 81 NY2d 709 [1993]). It also fails to allege special damages that are specific and measurable (*see id.*; *Wehringer v Helmsley-Spear, Inc.*, 91 AD2d 585, 586 [1st Dept 1982], *affd* 59 NY2d 688 [1983]). In any event, the limitations period for a claim of prima facie tort is one year (*Havell v Islam*, 292 AD2d 210 [1st Dept 2002]). The

complaint does not clearly set forth exactly when defendants engaged in the acts giving rise to the cause of action, but, whether it was in the years preceding the commencement of the 2003 action or during the pendency of that action, the limitations period had expired by July 2011, when plaintiff commenced this action.

The fraud cause of action is not pleaded with the requisite detail (*see* CPLR 3016 [b]; *Small v Lorillard Tobacco Co.*, 252 AD2d 1, 15 [1st Dept 1998], *aff'd* 94 NY2d 43 [1999]). Plaintiff alleges that he relied to his detriment on defendants' false representations as to the authorization to defend, but he does not identify false representations of material facts on which he relied, the alleged representations were not all made to him, and he does not explain how he relied on them. As to defendants' representations about efforts undertaken to ameliorate the odors in his apartment, plaintiff does not allege what was said to him. Moreover, he could not have reasonably relied on those representations, given that he was litigating against defendants, and he could not have been harmed by them, given that the violations were sustained after an administrative hearing.

In any event, the fraud claim is barred by the statute of limitations, which is the greater of six years from the date the cause of action accrued or two years from the time the plaintiff discovered the fraud (CPLR 213 [8]). Plaintiff's cause of action accrued some time before 2003, when he was involved in the various administrative proceedings and before he sold his apartment. To the extent he may later have discovered improprieties in connection with the authorization letters, that discovery preceded the commencement of this action by more than two years.

Plaintiff concedes that his Judiciary Law § 487 cause of action is inapplicable to 176 W. 87th St Owners Corp. and Steinhardt Management, neither of which is an attorney. As to the attorney defendants, the cause of action fails to allege that plaintiff suffered any injury proximately caused by any deceit or collusion on their part, and no such injury can reasonably be inferred from the allegations in the complaint (*Seldon v Spinnell*, 95 AD3d 779 [1st Dept 2012], *lv denied* 20 NY3d 857 [2013]; *Rozen v Russ & Russ, P.C.*, 76 AD3d 965 [2d Dept 2010]). To the extent the Judiciary Law § 487 cause of action is based on conduct that occurred before 2005, it is in any event barred by the six-year statute of limitations (*see Guardian Life Ins. Co. of Am. v Handel*, 190 AD2d 57, 62 [1st Dept

We find that the complaint is without merit and apparently was undertaken to harass defendants ([*see Great Am. Ins. Cos. v Bearcat Fin. Servs., Inc.*, 90 AD3d 533](#) [1st Dept 2011], *lv dismissed* 18 NY3d 951 [2012]). Accordingly, an award of attorneys' fees to Steinhardt is [*3]appropriate, and we remand the matter for a determination of the amount of fees incurred.

Contrary to his contention, plaintiff failed to establish that Cantor made material factual statements that were false or in direct conflict with his client's testimony and should be sanctioned therefor. Nor did plaintiff establish any basis for disqualifying Cantor and his firm from representing Feldman and Sonnenschein, Sherman & Deutsch, LLP.

The court properly granted Cantor's motion to quash the subpoena served on him, since it sought documents and testimony protected by the attorney-client privilege.

We have considered plaintiff's other arguments and find them unavailing. Concur—Gonzalez, P.J., Friedman, Moskowitz and Feinman, JJ.

NEW YORK STATE UNIFIED COURT SYSTEM

PART 1200 –

RULES OF
PROFESSIONAL CONDUCT



APRIL 1, 2009

THESE RULES OF PROFESSIONAL CONDUCT WERE PROMULGATED AS JOINT RULES OF THE APPELLATE DIVISIONS OF THE SUPREME COURT, EFFECTIVE APRIL 1, 2009. THEY SUPERSEDE THE FORMER PART 1200 (DISCIPLINARY RULES OF THE CODE OF PROFESSIONAL RESPONSIBILITY).

THE NEW YORK STATE BAR ASSOCIATION HAS ISSUED A PREAMBLE, SCOPE AND COMMENTS TO ACCOMPANY THESE RULES. THEY ARE NOT ENACTED WITH THIS PART, AND WHERE A CONFLICT EXISTS BETWEEN A RULE AND THE PREAMBLE, SCOPE OR A COMMENT, THE RULE CONTROLS.

EXHIBIT 3

law firm will be able to provide competent and diligent representation in the matter.

(e) A person who:

- (1) communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship; or
- (2) communicates with a lawyer for the purpose of disqualifying the lawyer from handling a materially adverse representation on the same or a substantially related matter, is not a prospective client with the meaning of paragraph (a).

RULE 2.1:**ADVISOR**

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, psychological, and political factors that may be relevant to the client's situation.

RULE 2.2:**[RESERVED]**

RULE 2.3:**EVALUATION FOR USE BY THIRD PERSONS**

- (a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Unless disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is protected by Rule 1.6.

RULE 2.4:**LAWYER SERVING AS THIRD-PARTY NEUTRAL**

- (a) A lawyer serves as a "third-party neutral" when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

RULE 3.1:**NON-MERITORIOUS CLAIMS AND CONTENTIONS**

- (a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous. A lawyer for the defendant in a criminal proceeding or for the respondent in a proceeding that could result in incarceration may nevertheless so defend the proceeding as to require that every element of the case be established.
- (b) A lawyer's conduct is "frivolous" for purposes of this Rule if:
 - (1) the lawyer knowingly advances a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law;
 - (2) the conduct has no reasonable purpose other than to delay or prolong the resolution of litigation, in violation of Rule 3.2, or serves merely

to harass or maliciously injure another; or

- (3) the lawyer knowingly asserts material factual statements that are false.

RULE 3.2:**DELAY OF LITIGATION**

In representing a client, a lawyer shall not use means that have no substantial purpose other than to delay or prolong the proceeding or to cause needless expense.

RULE 3.3:**CONDUCT BEFORE A TRIBUNAL**

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer or use evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) apply even if compliance requires disclosure of in-

formation otherwise protected by Rule 1.6.

- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.
- (e) In presenting a matter to a tribunal, a lawyer shall disclose, unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.
- (f) In appearing as a lawyer before a tribunal, a lawyer shall not:
- (1) fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the intent not to comply;
 - (2) engage in undignified or discourteous conduct;
 - (3) intentionally or habitually violate any established rule of procedure or of evidence; or
 - (4) engage in conduct intended to disrupt the tribunal.

RULE 3.4:**FAIRNESS TO OPPOSING PARTY AND COUNSEL**

A lawyer shall not:

- (a) (1) suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce;
- (2) advise or cause a person to hide or leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein;
- (3) conceal or knowingly fail to disclose that which the lawyer is required by law to reveal;
- (4) knowingly use perjured testimony or false evidence;
- (5) participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false; or
- (6) knowingly engage in other illegal conduct or

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING
J.S.C.
Justice

PART 44

Index Number : 102357/2011
BOHN, THEODORE
vs.
176 W. 87TH ST. OWNERS
SEQUENCE NUMBER : 017
COUNSEL FEES, EXPENSES

INDEX NO. _____
MOTION DATE 7/25/13
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is

FILED

SEP 24 2013

COUNTY CLERK'S OFFICE

NEW YORK

ORDERED that the issue of attorney's fees, if any, in the above captioned matter, is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the filing of s stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforementioned issue; and it is further

ORDERED that this motion is held in abeyance pending receipt of the report and recommendations of the Special referee and a motion pursuant to CPLR 4403 or receipt of the determination of the Special referee or the designated referee; and it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Judicial Support office to arrange a date for the reference to a Special Referee.

Dated: 9/12/13

met, J.S.C.

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

EXHIBIT 4

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. IRA GAMMERMAN, J.H.O.

PART 27

Index Number : 102357/2011

BOHN, THEODORE

vs

176 W. 87TH ST. OWNERS

Sequence Number : 019

HEAR AND REPORT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

*Hearings conducted
Report issued.
See record, K. Mennelle
it is so ordered
E. J.*

FILED
DEC 10 2013
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/26/13

W. J.S.C.

HON. IRA GAMMERMAN, J.H.O. *JHG*

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

EXHIBIT 5

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY : CIVIL TERM : JHO

-----x
THEODORE BOHN,

Plaintiff,

INDEX NO.
102357/2011

-against-

176 W. 87TH ST. OWNERS CORP., its former
and current officers and directors,
PAUL GOTTSEGEN, INSIGNIA MANAGEMENT,
HALSTEAD MANAGEMENT, MARK RUDD, ESQ.,
FREDERICK RUDD, RICHARD KLEIN, ROBERT
HOCHMAN, ESQ., HOCHMAN & COHEN,
STEINHARDT MANAGEMENT, INC., MORTON
GETMAN, SETH FRIEDLAND, ESQ., FRIEDLAND,
LAIFER & ROBBINS, MICHAEL DORRY, DOMONIC
PICININNI, CURTIS VASILE, P.C., ONE
BEACON INSURANCE COMPANY, RICHARD FELDMAN,
ESQ., SONNENSCHNEIN, SHERMAN & DEUTSCH, LLP,
X, Y and Z, 10 JOHN DOES, and 10 JANE DOES,

FILED

Defendants.

-----x
November 26, 2013

DEC 10 2013

60 Centre Street
New York, New York

NEW YORK
COUNTY CLERK'S OFFICE

B E F O R E :

HON. IRA GAMMERMAN, JHO.

A P P E A R A N C E S :

THEODORE BOHN
501 5th Avenue, Suite 1900
New York, New York 10017
Plaintiff Pro Se

KAREN M. MENNELLA
Senior Court Reporter

1

2 A P P E A R A N C E S (Cont'd):

3 CANTOR, EPSTEIN & MAZZOLA, LLP

49 West 37th Street, 7th Floor

4 New York, New York 10018

BY: AYANA M. ROBERTSON, ESQ.

5 Attorneys for the Defendants

176 West 87th Street Owners Corp.,

6 Paul Gottsegen, Insignia Management,

Halstead Management, Richard Feldman, Esq.,

7 and Sonnenschein, Sherman & Deutsch, LLP.

8 JAROSLAWICZ & JAROS, LLC

225 Broadway, 24th Floor

9 New York, New York 10007

BY: MICHELLE HOLMAN, ESQ.

10 Attorneys for the Defendant

Steinhardt Management

11

FRIEDLAND, LAIFER & ROBBINS, LLP

12 62 William Street, 3rd Floor

New York, New York 10005

13 BY: EUGENE P. HANSON, ESQ.

SETH D. FRIEDLAND, ESQ.

14 Attorneys for the Defendants

Friedland, Laifer & Robbins, LLP.

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1 Proceedings

2 THE COURT: This case is 604. It's here pursuant
3 to both an order of the Appellate Division, First Department
4 and Justice Tingling, as I recall.

5 The Appellate Division has already concluded that
6 the Jaroslawicz firm is entitled to -- or the attorney --
7 the client represented by the Jaroslawicz firm is entitled
8 to reimbursement of all or part of the fees incurred or
9 charged by the Jaroslawicz firm in connection with the
10 representation of that party, and that's Michelle -- oh, no,
11 no. That party is -- which party did the Jaroslawicz firm
12 represent?

13 MS. HOLMAN: Steinhardt Management.

14 THE COURT: Based on the conclusion by the
15 Appellate Division that the claim that was asserted by the
16 Pro Se Plaintiff was frivolous, and so we have to deal with
17 that. There's another aspect of the case in which another
18 party represented by which counsel?

19 MR. HANSON: Friedland.

20 THE COURT: You're Mr. Hanson, correct.

21 MR. HANSON: Yes.

22 THE COURT: What's the name of your client?

23 MR. HANSON: The Friedland Defendants. Seth
24 Friedland.

25 THE COURT: With respect to that Defendant Justice
26 Tingling apparently has not concluded whether or not that

1 Proceedings

2 Defendant is entitled to reimbursement from the Pro Se
3 Plaintiff for all or part of the fees incurred or paid and
4 referred that matter to a referee, although in my view
5 that's really something that the judge can decide, but I'm
6 prepared to make a recommendation and if I conclude that the
7 situation with respect to that Defendant is essentially the
8 same as the situation with respect to Defendant that the
9 Appellate Division has ruled on, I'll deal with the amount.

10 And there's, as I understand it, a third motion
11 pending before Justice Tingling for the same type of relief
12 by another of the Defendants.

13 MS. ROBERTSON: That's correct, Your Honor.

14 THE COURT: Let's start with how much is the -- how
15 much did the client pay the Jaroslawicz firm or owe? How
16 much does it owe the Jaroslawicz firm for services performed
17 in this case?

18 MS. HOLMAN: \$36,887.50.

19 THE COURT: Okay.

20 MS. HOLMAN: Plus expenses.

21 THE COURT: I beg your pardon?

22 MS. HOLMAN: Plus expenses of \$2,778.83.

23 THE COURT: And who did most of the work?

24 MS. HOLMAN: I did most of the work, Judge.

25 THE COURT: You want to question counsel?

26 MR. BOHN: No, Your Honor. I've reviewed the

1 Proceedings

2 invoices they've submitted. The only objection I would have
3 to the invoice is that when Mr. Jaroslawicz was here last
4 Your Honor asked whether these were contemporaneously
5 maintained billing records, which Mr. Jaroslawicz --

6 THE COURT: No. What he said was, as I recall and
7 the record will reflect it, that that's not the way the law
8 firm maintains records. What they try to do in a situation
9 like this is sit down with the file, review it and try to
10 make an intelligent and reasonable calculation as to the
11 amount of time that they spent.

12 Based on what type of hourly rate?

13 MS. HOLMAN: An hourly rate of \$400 per hour for me
14 and \$550 an hour for David.

15 THE COURT: Okay.

16 MR. BOHN: Yes, so that's, you know, my only
17 objection's to the invoice they've submitted is that --

18 THE COURT: Well, it would seem to me that you,
19 having litigated this case, would be familiar with what
20 amount of time a law firm or lawyers would spend.

21 How many hours is being claimed, Counselor? Your
22 hours and David's hours.

23 MS. HOLMAN: My hours, 43 and a half hours.
24 David's hours, 33 and a quarter hours. And another three
25 hours for another associate, and we believe that that is
26 very low, Judge.

1 Proceedings

2 THE COURT: Well, based -- I mean, you've litigated
3 this case. The question is does that -- do you have any
4 question as to whether or not those hours appear to be
5 reasonable?

6 MR. BOHN: No, I don't have any question about
7 that.

8 THE COURT: You think they appear to be reasonable?

9 MR. BOHN: Yes, Your Honor.

10 THE COURT: All right. So the claim is how much in
11 total?

12 MS. HOLMAN: Give me just one moment, please,
13 Judge.

14 THE COURT: How about the hourly rates, 400 for the
15 associate and 550 for the partner?

16 MR. BOHN: Well I think those might --

17 THE COURT: Be a little high?

18 MR. BOHN: Yes.

19 THE COURT: Give me the total number of hours,
20 Counselor.

21 MS. HOLMAN: Total number of hours for David
22 Jaroslawicz is 33 and a quarter. The total for me is 43 and
23 a half. And there's another associate who worked on the
24 appeal who also bills at \$400 an hour, and he billed three
25 hours.

26 THE COURT: Okay.

1 Proceedings

2 MS. HOLMAN: So the total legal fee we're seeking
3 is \$36,887.50.

4 THE COURT: Right.

5 MS. HOLMAN: Plus expenses of \$2,778.83, which is a
6 total of \$39,666.33.

7 THE COURT: All right. I recommend \$30,400 in
8 connection with that aspect of the case.

9 MS. HOLMAN: Thank you, Your Honor.

10 THE COURT: Hold on for a moment.

11 MS. HOLMAN: Thank you, Judge.

12 THE COURT: Okay. Now, let me just ask Mr. Bohn,
13 is the claim against Mr. Hanson's client, the one that was
14 dismissed, substantially different from the claim against
15 the clients -- Jaroslawicz client?

16 MR. BOHN: I think so, Your Honor, yes.

17 THE COURT: All right. Then let's -- do you have a
18 witness Mr. Hanson? How are we going to make this
19 determination?

20 MR. HANSON: Well, I can testify to the work that I
21 did on the case.

22 THE COURT: No, that's not the question. That's
23 not the issue at the moment. The issue is whether or not
24 the claim against your client was so frivolous that I should
25 make the same decision that the Appellate Division made with
26 respect to Mr. Jaroslawicz's client.

1 Proceedings

2 MR. HANSON: Yes, in my opinion it was frivolous.
3 Not only did we obtain reversal on appeal --

4 THE COURT: Well, that doesn't mean that every
5 lawyer -- every defendant who gets a reversal on appeal is
6 entitled to have his lawyer's fee paid. Obviously there
7 needs to be more than that, it seems to me.

8 MR. HANSON: Correct. We claimed and state any
9 appeal that benefited all defendants in the case --

10 THE COURT: The issue, as I recall -- do you have a
11 copy of the Appellate Division decision, anybody?

12 MR. HANSON: I have a copy of the Appellate
13 Division decision.

14 THE COURT: Your client is who, Mr. Hanson?

15 MR. HANSON: The Friedland Defendants.

16 THE COURT: That's the law firm?

17 MR. HANSON: The law firm and --

18 THE COURT: Sorry.

19 MR. HANSON: The law firm Friedland, Laifer &
20 Robbins and the lawyer who started the law firm, Seth
21 Friedland.

22 THE COURT: Okay. The Appellate Division, Great
23 American v. Bearcat, a case which I granted sanctions --
24 much to my everlasting regret, it's still alive about a week
25 ago, maybe a month ago -- states we find that the complaint
26 is without merit and apparently was undertaken to harass

1 Proceedings

2 Defendants. Accordingly, an award of attorneys' fees to
3 Steinhardt is appropriate.

4 Now, why if the Appellate Division made a
5 determination that the complaint was without merit and was
6 undertaken to harass Defendants, why was it -- why did the
7 Court only decide that Steinhardt's attorneys' fees are the
8 ones to be dealt with?

9 MR. HANSON: Because, Your Honor, the Steinhardt
10 Defendants were the only ones who at that time had asked for
11 attorneys' fees.

12 THE COURT: I see. I see.

13 MR. HANSON: I emphasize that the Court said that
14 the complaint was apparently intended to harass Defendants
15 Steinhardt. It's only one Defendant.

16 THE COURT: I agree. I agree. It's your view that
17 had the request been made by any of the other Defendants the
18 Appellate Division would have dealt with it at that point?

19 MR. HANSON: I'm sure they would have, Your Honor.

20 THE COURT: Yes, Mr. Bohn?

21 MR. BOHN: I'm sorry, Judge, that's simply untrue.
22 In fact, the Cantor Epstein firm had a cross motion for
23 sanctions pending, so...

24 THE COURT: Before the Appellate Division?

25 MS. ROBERTSON: No, that's not correct. We had a
26 cross motion for sanctions before Judge Tingling, but we

1 Proceedings

2 never appealed that aspect of our motion to the Appellate
3 Division.

4 THE COURT: Okay, so that issue was not before the
5 Appellate Division.

6 MS. ROBERTSON: Correct.

7 MR. BOHN: Wait. I'm not sure if the argument
8 that's now being made that they never appealed --

9 THE COURT: No. What they said is when Judge
10 Tingling apparently initially denied all motions to dismiss,
11 that's what prompted the appeal. I take it when the Cantor
12 firm moved to dismiss on behalf of its client it also asked
13 Judge Tingling to assess sanctions.

14 The judge denied the motion, I take it; is that
15 correct?

16 MS. ROBERTSON: He denied our motion, but our
17 motion for sanctions was separate than our motion to
18 dismiss. The motion for sanctions was in connection to a
19 motion to quash where Mr. Bohn was seeking to subpoena the
20 head partner of our law firm.

21 THE COURT: Okay. In any event, in connection with
22 the motion to dismiss there was no application for
23 sanctions?

24 MS. ROBERTSON: Correct.

25 THE COURT: So that was not anything that was
26 before the Appellate Division?

1 Proceedings

2 MS. ROBERTSON: That's correct.

3 THE COURT: Okay. All right. Well, let's deal
4 with it. How much are you seeking for your firm's work, Mr.
5 Hanson?

6 MR. HANSON: Actually, I'd like to amend my
7 application, Your Honor. The last time I said we were only
8 applying for my fees, but the original motion to dismiss was
9 prepared by Seth Friedland himself, and I saw him prepare
10 it. He spent about a half day dictating it.

11 THE COURT: But he didn't --

12 MR. HANSON: Pardon me.

13 THE COURT: Who billed him for his time?

14 MR. HANSON: Well, it's --

15 THE COURT: I'm not -- I had an interesting
16 situation. I'll tell you, he's not going to get -- I'm not
17 going to assess money to Mr. Friedland for his time. He
18 didn't pay anybody.

19 Off the record.

20 (Whereupon, there was an off-the-record
21 discussion.)

22 THE COURT: I don't think that if Mr. Friedland
23 represented himself and didn't pay himself he's entitled to
24 be compensated at his regular rates for the work that he did
25 in representing himself, so let's deal with his obligation
26 to pay someone else.

1 Proceedings

2 MR. HANSON: Okay. I spent on all --

3 THE COURT: What firm? Your firm is?

4 MR. HANSON: Friedland, Laifer & Robbins.

5 THE COURT: That's his own firm.

6 MR. HANSON: Correct.

7 THE COURT: Okay. So his firm, his own firm,
8 represented himself?

9 MR. HANSON: Represented him and the firm.

10 THE COURT: Yeah, got it.

11 MR. HANSON: These were cases that, as the
12 Appellate Division found, were frivolous and intended to
13 harass.

14 THE COURT: I understand they're frivolous. The
15 problem is that Mr. Friedland did not incur any expense.
16 Maybe he filed some filing fees.

17 MR. HANSON: He had to pay me. I don't work for
18 free.

19 THE COURT: You're a member of his firm or an
20 employee of his firm?

21 MR. HANSON: Correct.

22 THE COURT: An associate, what's your position?

23 MR. HANSON: I'm an independent contractor working
24 for his firm.

25 THE COURT: Oh, okay. All right. How much did he
26 pay you?

1 Proceedings

2 MR. HANSON: I don't know what the total amount was
3 that he paid me, but at my billing rate --

4 THE COURT: Just a minute. How do you know -- how
5 much did he pay you? That seems to me his damage.

6 MR. HANSON: Well, I'm sure Your Honor understands
7 the economics of law firms, I have a billing rate that we
8 bill out to clients.

9 THE COURT: Listen to me.

10 MR. HANSON: The time that I spent on this case --

11 THE COURT: You did work?

12 MR. HANSON: Yes.

13 THE COURT: On this matter?

14 MR. HANSON: Correct.

15 THE COURT: Did you get compensation from Mr.
16 Friedland?

17 MR. HANSON: I did get compensation.

18 THE COURT: How much did you get?

19 MR. HANSON: I haven't determined that, but I have
20 determined that my compensation would have been at my
21 regular billing rate.

22 THE COURT: But that's not what it cost Mr.
23 Friedland. He was sued, he had to pay a legal fee.

24 MR. HANSON: Correct.

25 THE COURT: How much did he pay you? You're an
26 independent contractor?

1 Proceedings

2 MR. HANSON: I'd have to do the calculation. I'd
3 have to do the math.

4 THE COURT: Can you do it now?

5 MR. HANSON: I can try.

6 THE COURT: Okay.

7 MR. HANSON: I majored in English, so not terribly
8 good at math.

9 THE COURT: Okay.

10 MR. BOHN: Your Honor, can I just ask one question?

11 THE COURT: Yes, Mr. Bohn.

12 MR. BOHN: I believe Mr. Hanson, when he says he is
13 an independent contractor, he just means that he works for
14 the Friedland firm. He's not paid as an outside attorney.
15 He's employed by Friedland, Laifer & Robbins.

16 THE COURT: Just a minute.

17 MR. HANSON: I'm not an employee of Friedland,
18 Laifer & Robbins.

19 THE COURT: Did you work on this -- you actually
20 worked on this file?

21 MR. HANSON: Correct.

22 THE COURT: How many hours did you work on this
23 file?

24 MR. HANSON: 252.75 hours.

25 THE COURT: And were you paid by the Friedland
26 firm?

1 Proceedings

2 MR. HANSON: Yes. It's approximately, if my math
3 is correct, I'm not sure that it is, approximately \$20,329.
4 There's something wrong here. I'm missing something.
5 Upwards of \$18,300. I rounded.

6 THE COURT: All right. That's an amount that was
7 actually paid to you for the services that you performed on
8 this matter?

9 MR. HANSON: Yes.

10 THE COURT: Do you want to question Mr. Hanson, Mr.
11 Bohn? I'll swear him if you're going to question him.

12 MR. BOHN: Well, I will do that, Your Honor, I just
13 have one or two preliminary questions. Does that mean that
14 the motion has been granted?

15 THE COURT: I'm going to recommend, based on the
16 fact that the Appellate Division concluded that the
17 complaint was without merit and was undertaken to harass the
18 Defendants and determined that the party that requested
19 attorneys' fees before the Appellate Division was entitled
20 to it, I'm prepared to recommend to Justice Tingling that
21 all the defendants are entitled to the same relief that the
22 Appellate Division granted the Jaroslawicz firm and
23 recommend the \$18,300 that Mr. Hanson just testified to.

24 He wasn't under oath, but I'll give you an
25 opportunity -- at least he represented to me that that was
26 the reasonable amount of compensation for the services that

1 Proceedings

2 he performed, and I'll give you an opportunity to question
3 him. You agreed that the Jaroslawicz number of hours was a
4 reasonable number of hours.

5 The question is do you have a dispute with respect
6 to the amount of time that Mr. Hanson spent on the matter?

7 MR. BOHN: Well, Your Honor, I was only asking the
8 question because this was the subject of a motion, and I
9 submitted very detailed opposition papers.

10 THE COURT: To Justice --

11 MR. BOHN: Tingling.

12 THE COURT: Well, with respect to the merits -- it
13 seems to me that the decision really is whether or not the
14 underlying lawsuit was started without merit to harass the
15 Defendants. That decision has already been made by the
16 Appellate Division.

17 MR. BOHN: Right.

18 THE COURT: It would be very nice if I were in a
19 position to reverse the Appellate Division, but that's not
20 my role. So it seems to me that I find that very
21 persuasive.

22 MR. BOHN: Right. I understand, Your Honor.

23 THE COURT: So that the question I'm prepared,
24 therefore, to recommend to Justice Tingling that he follow
25 the lead of the Appellate Division and that he award at
26 least to the Friedland clients the amount of money that was

1 Proceedings

2 laid out in connection with this litigation to defend the
3 claim you asserted. If you want to raise an issue with
4 respect to whether or not that \$18,300 is a reasonable
5 number, I'm prepared to listen to your questioning of Mr.
6 Hanson.

7 MR. BOHN: I just have a few questions.

8 THE COURT: Of Mr. Hanson?

9 MR. BOHN: Correct.

10 THE COURT: Raise your right hand, Mr. Hanson.

11 (Whereupon, Mr. Hanson was sworn in by the Court.)

12 THE COURT: Give your full name and address to the
13 Court, please.

14 MR. HANSON: Eugene P. Hanson, H-A-N-S-O-N. Nine
15 Chester Brook Road, Chester, New Jersey 07930.

16 THE COURT: Go ahead, Mr. Bohn.

17 DIRECT EXAMINATION BY

18 MR. BOHN:

19 Q So, Mr. Hanson, how did you arrive at the \$18,000
20 figure that you just testified to?

21 A I multiplied 252 hours, which is fewer than the hours I
22 have here by three quarters of an hour, times \$75 an hour, which
23 is the rate that I'm paid by the firm.

24 Q And are you employed by Friedland, Laifer & Robbins?

25 A No, I am not. An independent contractor.

26 Q So do you -- who are you paid by?

1 Proceedings

2 A I'm paid by Friedland, Laifer & Robbins.

3 Q And do you receive a W-2?

4 A No.

5 THE COURT: You get a 1099.

6 THE WITNESS: 1099.

7 Q Directing your attention to the billing entry dated
8 9/21/11, do you see that line?

9 A Yes.

10 Q And first of all -- I'm sorry, did you -- let me back
11 up just a second.

12 Did you prepare these records?

13 A These records were prepared based upon time sheets that
14 I submitted to our office administrator who prepares our billing
15 records from the time sheets.

16 Q Okay. And are those time sheets prepared by hand?

17 A They are prepared by hand.

18 Q So you -- these are electronic representations of the
19 handwritten billing records that you submitted; is that correct?

20 A Correct.

21 Q Directing your attention to, again, the September 21,
22 2011 entry, do you see where it says research re: CPLR 2308,
23 disobedience of subpoena?

24 A I do.

25 Q And what was the reason for that research?

26 A There was an allegation in your complaint that Mr.

1 Proceedings

2 Friedland had disobeyed a subpoena, and I was researching the
3 CPLR provision on that.

4 Q Well, did Mr. Friedland appear in connection with that
5 subpoena?

6 A Pardon me?

7 Q Did Mr. Friedland appear --

8 THE COURT: I'm not interested -- see, the problem
9 is I'm not going to go behind the statement by the Appellate
10 Division that the action was started apparently to harass
11 the Defendants, so that you really -- it's not appropriate
12 for me.

13 At this point it would be a waste of everybody's
14 time for me to take the evidence with respect to the
15 underlying merits or lack of merits of the lawsuit that the
16 Appellate Division dealt with.

17 MR. BOHN: Very well, Your Honor.

18 MR. HANSON: Exactly.

19 Q Directing your attention to the same billing entry, do
20 you see where it says "review order to show cause in underlying
21 action"?

22 A Yes.

23 Q So how -- so this represents billing for a case
24 unrelated to this one; is that correct?

25 A No, it was a related case.

26 Q But it wasn't -- the order to show cause in the

1 Proceedings

2 underlying action was not billing made necessary by this
3 litigation; is that correct?

4 A Your allegations in the complaint referenced the
5 underlying action.

6 Q What need was there to review an order to show cause in
7 the underlying case?

8 A Sitting here today, I don't remember exactly why.

9 THE COURT: Okay. That's the answer.

10 Q Directing your attention to the next entry two lines
11 down, 9/23/2011, do you see where it says research and review
12 cases re: Form of denial?

13 A Yes.

14 Q And what exactly does that mean, form of denial?

15 A I don't recall.

16 Q Directing your attention to the bottom page, 9/26/2011,
17 do you see where it says "telephone conference with Dominic
18 Picininni re: Deposition of Richard Feldman"?

19 A I do.

20 Q And what was the need for -- what knowledge did Mr.
21 Picininni have re Mr. Feldman's deposition?

22 A Today I don't recall.

23 THE COURT: Okay. That's the answer.

24 Q Directing your attention to the entry on April 18,
25 2012, do you see where it says "telephone conference with D.
26 Picininni, David Jaroslawicz, Robert Cantor and Judge Tingling's

1 Proceedings

2 clerk re: Decision and order on motions to dismiss"?

3 A I do.

4 Q And so I take it from this entry that you, Mr.

5 Picininni, Mr. Jaroslawicz, Mr. Cantor were on a conference call
6 with Judge Tingling's clerk; is that correct?

7 A Apparently so.

8 Q And what was discussed at that time?

9 A I don't remember.

10 Q Did you initiate that conference call?

11 A I don't believe so.

12 Q Is there a reason that the Plaintiff wasn't included in
13 that conference?

14 A I have no idea. I have no idea who initiated it or why
15 the Plaintiff was not included.

16 Q And was the judge on the phone at any point?

17 A Not to my recollection. I don't recall ever speaking
18 to the judge.

19 THE COURT: That's the answer.

20 Q Directing your attention to your entry marked --
21 sorry -- entered May 8, 2012; do you see that?

22 A I do.

23 Q Draft answers to interrogatories. Did you ever produce
24 those interrogatories?

25 A I don't remember. I didn't produce the
26 interrogatories.

1 Proceedings

2 THE COURT: All right. That's the answer.

3 Q Directing your attention to the entry dated May 18,
4 2012; do you see that?

5 A Yes.

6 Q I'm sorry, one second. And that says "review
7 Steinhardt motion to reargue and renew," correct?

8 A Correct.

9 Q I don't know -- I don't recall Steinhardt having moved
10 to reargue those motions, sir.

11 THE COURT: What's your question?

12 Q Do you know whether Steinhardt actually moved to
13 reargue or renew?

14 A I don't have current recollection of it, but it's in my
15 time sheet.

16 THE COURT: Go ahead.

17 Q Again directing your attention to the entry of
18 7/3/2012, do you see the entry "e-mails to and from Dominic
19 Picininni re: New York County civil complaint and amended
20 complaint and case status"?

21 A Yes.

22 Q And again, so you're seeking compensation for work
23 performed on a case other than this case and in which you are
24 not -- your client was not a party; is that correct?

25 A That was the related case referenced in your complaint
26 and part of the basis of the charges against my client,

1 Proceedings

2 allegations against my client.

3 Q You're seeking compensation, though, for services
4 performed with respect to a case other than this case to which
5 your client is not a party?

6 A No, I considered that with respect to this case. I'm
7 seeking background information from Mr. Picininni.

8 Q What background information?

9 A What the status was of the case in New York County
10 Civil Court.

11 Q That's not an answer to the question.

12 THE COURT: What's the question? Don't comment on
13 answers, just ask questions.

14 Q The question is what information were you seeking on
15 the underlying case?

16 THE COURT: There was a case in Civil Court that in
17 some way had some information relating to this case?

18 THE WITNESS: It was a case in Civil Court that
19 involved the allegations that Mr. Bohn made about the odors
20 emanating from the restaurant causing him to move out in
21 which we represent certain parties.

22 MR. FRIEDLAND: May I speak, Judge?

23 THE COURT: No, you're not a witness. Let's move
24 on. Anything else?

25 Q The July 13, 2012 -- okay.

26 MR. BOHN: Your Honor, I have to just report that

1 Proceedings

2 we're now under a stay I filed for under Chapter 7 during
3 the pendency of this proceeding, so the proceedings are
4 stayed.

5 THE COURT: Well, that's up to Judge -- I'm just
6 going to make a report to Judge Tingling and it's up to
7 Judge Tingling to decide whether or not to take any action
8 or refrain from taking action.

9 MR. BOHN: Okay. So we're going to proceed despite
10 the fact that --

11 THE COURT: I'm going to finish this proceeding and
12 get this off my books.

13 MR. BOHN: As long as that's on the record.

14 THE COURT: If you have a bankruptcy stay that's
15 something you bring to Judge Tingling's attention.

16 MR. BOHN: Okay. Very good. Okay, I don't have
17 any further questions.

18 THE COURT: Okay. In any event, I recommend, as I
19 said, \$34,400 in fees to the Jaroslawicz firm or really on
20 behalf of the Jaroslawicz client, would be Steinhardt, and
21 \$18,300 on behalf of Mr. Hanson's client.

22 MR. HANSON: Your Honor, if I may, we also had
23 disbursements of \$2,277.82.

24 THE COURT: Okay.

25 MR. FRIEDLAND: Actually, it's \$2,308.28. It
26 should be in Exhibit 1.

1 Proceedings

2 THE COURT: I'm just recommending the \$18,300. All
3 right. Who gave me this, the copy of the decision?

4 MR. HANSON: That's my copy.

5 MR. FRIEDLAND: Judge, if I may, on that issue on
6 the bill that was submitted as Exhibit 1 by Mr. Hanson, the
7 disbursements are itemized. Those are real out of pocket.

8 THE COURT: I know.

9 MR. FRIEDLAND: That went for various filing fees
10 and legal attorneys' service fees.

11 THE COURT: Right. I've made my report. Thank you
12 all very much.

13 MS. HOLMAN: Thank you, Judge.

14 MR. HANSON: Thank you, Judge.

15 *****

16 C E R T I F I C A T E

17

18 I, Karen M. Mennella, a Senior Court Reporter for the State of
19 New York do hereby certify that the foregoing is a true and
20 accurate transcription of my original stenographic notes.

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FILED

DEC 10 2013

12/9/13 So ordered
NEW YORK
COUNTY CLERK'S OFFICE
-1/10

Karen M. Mennella

Karen M. Mennella,
Senior Court Reporter

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Milton A. Tingling
Justice

PART 44

Theodore Bohu

INDEX NO. 102357/1
MOTION DATE 12/9/13
MOTION SEQ. NO. 020
MOTION CAL. NO. 2

176 W 87th St owner Corp

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

This motion is hereby stayed pursuant to a bankruptcy filing by plaintiff

FILED

DEC 12 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 12/9/13

mal

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

EXHIBIT 6

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):